

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-210647**DATE:** June 20, 1983**MATTER OF:** Sunshine Machine, Inc.**DIGEST:**

1. Agency refusal to consider prompt-payment discount in bid evaluation is proper where solicitation incorporates revision to Defense Acquisition Regulation which precludes consideration of such discounts.
2. Complaint that agency improperly found offeror to be responsible without first conducting preaward survey is not for consideration since preaward survey is not legal prerequisite to affirmative determination of responsibility and such determinations are not reviewed by GAO except in situations not applicable to this case.

Sunshine Machine, Inc. (Sunshine), protests the proposed award of a contract to Mimco Company (Mimco) under invitation for bids (IFB) No. DLA700-83-B-0434 issued by the Defense Construction Supply Center (DCSC), a field activity of the Defense Logistics Agency. The protest is denied in part and dismissed in part.

On December 10, 1982, DCSC issued a solicitation for 1,607 firehose nozzles. Sunshine wired a bid to the Agency on January 12, 1983, the bid opening date. The bid clearly established Sunshine's unit price as \$93.89, but it stated Sunshine's prompt-payment discount as "20 percent days" rather than the 2-percent discount for payment received in 20 days, which Sunshine intended. Sunshine sent another wire on January 13, 1983, clarifying its intent regarding the prompt-payment discount. The Agency did not consider Sunshine's revision to its bid and found Mimco, with a \$93.50 unit price, to be the low bidder. In protesting to our Office on January 28, 1983, Sunshine argued that its prompt-payment discount should be considered by the Agency and that, when the discount was considered, Sunshine became the low bidder on the solicitation.

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The Agency argues that Sunshine's prompt-payment discount could not be considered because the Defense Acquisition Regulation (DAR) states that prompt-payment discounts should not be considered in the evaluation of offers. DAR § 7-2003.35 (Defense Acquisition Circular 76-36, June 30, 1982). While such discounts were considered in the past, Defense Acquisition Circular 76-36, dated June 30, 1982, revised the prompt-payment discount provisions to preclude consideration of such discounts in bid evaluation.

The solicitation incorporates by reference Standard Form (SF) 33A, Solicitation Instructions and Conditions; SF 33A still contains the conditions under which such discounts can be considered. However, the solicitation also contains a list of modifications to SF 33A, one of which incorporates the provision at DAR § 7-2003.35 and states:

"Paragraph 9(a) of Standard Form 33-A, 'Solicitation Instructions and Conditions,' is deleted, and prompt payment discounts will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices."

While our Office has held that prompt-payment discounts must be considered in the bid evaluation process if the discount provisions are included in the solicitation in their unrevised form, Geronimo Service Co., B-209613, February 7, 1983, 83-1 CPD 130, consideration of the discount would be improper here since the solicitation was revised to reflect the changes in the discount provisions.

In view of the above, it is unnecessary to consider the effect of the clarifying wire because the discount could not be considered in any event.

This portion of Sunshine's protest is denied.

On February 17, 1983, Sunshine amended its protest with our Office and raised questions regarding the Agency's determination of Mimco's responsibility. Sunshine argues that the contracting officer improperly relied upon a December 1982 preaward survey of Mimco, conducted in connection with another procurement, in reaching his decision to find Mimco responsible. Sunshine contends that Mimco lacks the facilities, experienced personnel, and equipment to perform the contract and that a preaward survey would have confirmed these contentions.

We have consistently held that affirmative determinations of responsibility made by the procuring agency will not be reviewed by our Office unless fraud or bad faith on the part of the contracting agency is alleged or the solicitation contains definitive responsibility criteria which have been misapplied. D & M Fiberglass Services, Inc., B-211165, April 4, 1983, 83-1 CPD 354. Since Sunshine does not argue that these exceptions are applicable here and since there is no legal requirement that a preaward survey be conducted in all cases to determine the responsibility of a prospective contractor, Klein-Sieb Advertising & Public Relations, Inc., B-194553.2, March 23, 1981, 81-1 CPD 214, we will not question the Agency's determination regarding Mimco's responsibility.

This portion of Sunshine's protest is dismissed.

for *Milton J. Fowler*
Comptroller General
of the United States